

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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HONEYWELL SAFETY PRODUCTS USA, INC.,	<b>Case No.</b>
Plaintiff,	
v.	
AKKAD DISTRIBUTION, LLC,	
Defendant.	

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Plaintiff Honeywell Safety Products USA, Inc. (“Honeywell”), as and for its Complaint against Defendant Akkad Distribution, LLC (“Akkad”), says as follows:

**THE PARTIES**

1. Honeywell is a Delaware corporation with its principal place of business located at 300 South Tryon Street, Charlotte, North Carolina.
2. Akkad is a Delaware limited liability corporation with its principal place of business located in Johnson, Arkansas.
3. Upon information and belief, the sole member of Akkad is David Maser.
4. Upon information and belief, David Maser is an individual who resides in and is a citizen of Pennsylvania.

**JURISDICTION AND VENUE**

5. Subject matter jurisdiction exists pursuant to 28 U.S.C. § 1332(a), which provides that “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States.”

6. Personal jurisdiction exists over Akkad in this Court because the parties consented to such jurisdiction via their agreement that the applicable law and forum for any dispute arising out of the contract at issue are the federal or state courts of New York, New York.

7. Venue is proper in this district based on the Parties' agreement that the applicable law and forum for any dispute arising out of the contract at issue are the federal or state courts of New York, New York.

### **FACTUAL ALLEGATIONS**

8. On or around October 20, 2020, Honeywell entered into a non-exclusive Distributor Agreement with Akkad pursuant to which Akkad agreed to purchase Honeywell Personal Protective Equipment ("PPE") for distribution to third parties (the "Distributor Agreement").

9. The PPE included N95 face masks, which Akkad agreed to sell to third parties pursuant to the terms and conditions of the Distributor Agreement.

10. On February 17, 2021, Honeywell and Akkad entered into Amendment No. 1 to the Distributor Agreement.

11. Pursuant to Amendment No. 1, Akkad agreed to purchase 125 million N95 face masks in monthly installments through December 2021.

12. Akkad agreed to purchase the N95 face masks as a price of \$0.99 per unit.

13. Akkad had also agreed to purchase an additional 1,070,000 masks at a price of \$0.96 per unit pursuant to a Purchase Order dated March 8, 2021.

14. Akkad agreed it had no right to terminate the Distributor Agreement under the Amendment so long as any portion of the 125 million purchase commitment remained outstanding, even clarifying that "[f]or the avoidance of doubt, [Akkad] commits to the full purchase quantities listed . . . without the right to cancel or terminate any or all of the purchase commitment."

15. Under the Distributor Agreement, Akkad also agreed to Honeywell's Terms and Conditions of Sale, which explicitly state that purchase orders made by Akkad cannot be cancelled except with Honeywell's express consent.

16. Akkad further agreed that if it was delinquent on its payments, Honeywell had the right, among other things, to impose late charges, withhold any amounts payable to Akkad, and recover all costs of collection, including attorneys' fees.

17. Honeywell delivered the first installment of 2,500,000 N95 face masks to Akkad in or around February 2021.

18. Akkad failed to pay for the February 2021 installment of N95 face masks.

19. Akkad has refused to accept the installments of N95 face masks that it was obligated to accept and pay for up to and through the date of the filing of this complaint.

20. By refusing to accept and pay for the past installments of N95 masks, Akkad has anticipatorily breached its obligation to accept and pay for the remaining installments of N95 face masks that it was required to purchase through the end of 2021.

21. Akkad is obligated to pay Honeywell \$123,750,000 for the 125 million N95 face masks that it agreed to purchase pursuant to the Distributor Agreement and Amendment No. 1 to the Distributor Agreement.

22. Akkad has not paid any of the funds owed to Honeywell pursuant to the Distributor Agreement and Amendment No. 1 to the Distributor Agreement.

23. Akkad also has not paid the additional \$1,027,200 it owes to Honeywell for the 1,070,000 N95 masks that it ordered pursuant to the March 8, 2021 Purchase Order.

24. Honeywell and Akkad engaged in the executive escalation dispute resolution process required by the Terms and Conditions of the Distributor Agreement prior to filing suit in an attempt to resolve the dispute, but no resolution was reached.

**FIRST CAUSE OF ACTION  
BREACH OF CONTRACT**

25. Honeywell reasserts and realleges the foregoing allegations as if set forth in full herein.

26. Honeywell and Akkad entered into a valid and enforceable agreement pursuant to which Honeywell agreed to sell and Akkad agreed to purchase N95 face masks.

27. Akkad issued purchase orders, which were not cancelable, pursuant to the Distributor Agreement.

28. Honeywell did not cancel any purchase orders with Akkad.

29. Akkad owes Honeywell \$1,027,200 for the 1,070,000 N95 masks that it ordered pursuant to the March 8, 2021 Purchase Order.

30. Akkad has not paid the \$1,027,200 that it owes to Honeywell.

31. Akkad and Honeywell also entered into Amendment No. 1 to the Distributor Agreement, pursuant to which Akkad agreed to purchase and Honeywell agreed to sell 125 million N95 masks at a price of \$0.99 per mask.

32. Honeywell shipped an installment of 2,500,000 N95 face masks to Akkad, but Akkad failed to pay Honeywell for the installment.

33. To date, Akkad has also failed to satisfy its obligation to accept and pay for the installments of N95 face masks through the date of the filing of this complaint.

34. Akkad also anticipatorily breached its obligation to accept and pay for the remaining installments of N95 masks through the end of 2021.

35. Akkad also breached its obligation to pay Honeywell \$123,750,000 owed pursuant to the Distributor Agreement and Amendment No. 1 to the Distributor Agreement.

36. Because of Akkad's breach of its obligations to accept and pay for 125 million N95 face masks, Honeywell has suffered and will continue to suffer damages.

WHEREFORE, Honeywell is entitled to entry of judgment in its favor and against Akkad for breach of contract in the amount of \$124,777,200.

**SECOND CAUSE OF ACTION  
UNJUST ENRICHMENT**

37. Honeywell reasserts and realleges the foregoing allegations as if set forth in full herein.

38. Honeywell pleads this cause of action for unjust enrichment in the alternative to the first cause of action for breach of contract with respect to the 2,500,000 N95 face masks that Honeywell shipped to Akkad.

39. Akkad has received a direct benefit from Honeywell by retaining the N95 masks Honeywell shipped to Akkad.

40. Akkad has not compensated Honeywell for the N95 masks that Akkad received from Honeywell.

41. It would be unjust for Akkad to retain the benefit of the N95 masks that Akkad received from Honeywell without compensating Honeywell.

42. Thus, Akkad has been unjustly enriched to the detriment of Honeywell.

WHEREFORE, Honeywell is entitled to entry of judgment in its favor and against Akkad for unjust enrichment.

**JURY DEMAND**

Honeywell hereby demands a trial by jury on all issues.

Dated: Newark, New Jersey  
September 3, 2021

**K&L GATES LLP**

s/ Loly G. Tor

Loly G. Tor, Esq.

[loly.tor@klgates.com](mailto:loly.tor@klgates.com)

One Newark Center, 10th Floor

Newark, NJ 07102

P: 973-848-4000

F: 973-848-4001

*Attorneys for Plaintiff Honeywell  
Safety Products USA, Inc.*